

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID LOUIS BUTTERFIELD
3414 Adams Lane
Redding, CA 96002

Registered Nurse License No. **426578**

Respondent

Case No. 2012-147

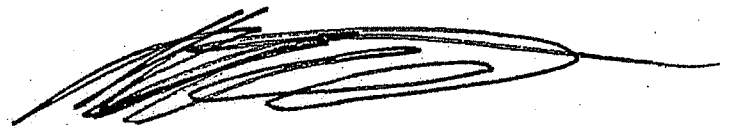
OAH No. 2011100536

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 10, 2012.

IT IS SO ORDERED July 13, 2012.



Erin Niemela
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-147

12 **DAVID LOUIS BUTTERFIELD**
13 **3414 Adams Lane**
Redding, CA 96002
14 **Registered Nurse License No. 426578**

OAH No. 2011100536

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing (Board). She brought this action solely in her official capacity and
22 is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Brian S. Turner, Deputy Attorney General.

24 2. Respondent David Louis Butterfield (Respondent) is represented in this proceeding
25 by attorney John M. Kucera, Esq., whose address is: 1416 West Street, Redding, CA 96001.

26 3. On or about June 30, 1989, the Board of Registered Nursing issued Registered Nurse
27 License No. 426578 to David Louis Butterfield. The Registered Nurse License was in full force
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1 and effect at all times relevant to the charges brought in Accusation No. 2011-147 and will expire
2 on January 31, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-147 was filed before the Board, Department of Consumer
5 Affairs, and is currently pending against Respondent. The Accusation and all other statutorily
6 required documents were properly served on Respondent on September 6, 2011. Respondent
7 timely filed a Notice of Defense contesting the Accusation.

8 A copy of Accusation No. 2012-147 is attached as Exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-147. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his behalf; the right to the issuance of subpoenas to compel
19 attendance of witnesses and production of documents; the right to reconsideration and court
20 review of an adverse decision; and all other rights accorded by the California Administrative
21 Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 2012-147.

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9. Respondent agrees that his Registered Nurse License is subject to discipline and agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

Upon successful completion of probation, Respondent's license shall be fully restored.

///.

1 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
2 or practice as a registered nurse outside of California shall not apply toward a reduction of this
3 probation time period. Respondent's probation is tolled, if and when he resides outside of
4 California. Respondent must provide written notice to the Board within 15 days of any change of
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where he has ever been licensed
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
9 information regarding the status of each license and any changes in such license status during the
10 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
11 license during the term of probation.

12 5. **Submit Written Reports.** Respondent, during the period of probation,
13 shall submit or cause to be submitted such written reports/declarations and verification of actions
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation
16 Program. Respondent shall immediately execute all release of information forms as may be
17 required by the Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
19 state and territory in which he has a registered nurse license.

20 6. **Function as a Registered Nurse.** Respondent, during the period of
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24
22 hours per week for 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered nursing"
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
25 non-direct patient care position that requires licensure as a registered nurse.

26 The Board may require that advanced practice nurses engage in advanced practice nursing
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

28 If Respondent has not complied with this condition during the probationary term, and

1 Respondent has presented sufficient documentation of his good faith efforts to comply with this
2 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
3 extension of Respondent's probation period up to one year without further hearing in order to
4 comply with this condition. During the one year extension, all original conditions of probation
5 shall apply.

6 7. **Employment Approval and Reporting Requirements.** Respondent shall
7 obtain prior approval from the Board before commencing or continuing any employment, paid or
8 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
9 performance evaluations and other employment related reports as a registered nurse upon request
10 of the Board.

11 Respondent shall provide a copy of this Decision to his employer and immediate
12 supervisors prior to commencement of any nursing or other health care related employment.

13 In addition to the above, Respondent shall notify the Board in writing within seventy-two
14 (72) hours after he obtains any nursing or other health care related employment. Respondent
15 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
16 regardless of cause, from any nursing, or other health care related employment with a full
17 explanation of the circumstances surrounding the termination or separation.

18 8. **Supervision.** Respondent shall obtain prior approval from the Board
19 regarding Respondent's level of supervision and/or collaboration before commencing or
20 continuing any employment as a registered nurse, or education and training that includes patient
21 care.

22 Respondent shall practice only under the direct supervision of a registered nurse in good
23 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
24 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
25 approved.

26 Respondent's level of supervision and/or collaboration may include, but is not limited to the
27 following:

28 (a) Maximum - The individual providing supervision and/or collaboration is present in

1 the patient care area or in any other work setting at all times.

2 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
3 care unit or in any other work setting at least half the hours Respondent works.

4 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
5 person communication with Respondent at least twice during each shift worked.

6 (d) Home Health Care - If Respondent is approved to work in the home health care
7 setting, the individual providing supervision and/or collaboration shall have person-to-person
8 communication with Respondent as required by the Board each work day. Respondent shall
9 maintain telephone or other telecommunication contact with the individual providing supervision
10 and/or collaboration as required by the Board during each work day. The individual providing
11 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
12 patients' homes visited by Respondent with or without Respondent present.

13 9. **Employment Limitations.** Respondent shall not work for a nurse's
14 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
15 traveling nurse, or for an in-house nursing pool.

16 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
17 registered nursing supervision and other protections for home visits have been approved by the
18 Board. Respondent shall not work in any other registered nursing occupation where home visits
19 are required.

20 Respondent shall not work in any health care setting as a supervisor of registered nurses.
21 The Board may additionally restrict Respondent from supervising licensed vocational nurses
22 and/or unlicensed assistive personnel on a case-by-case basis.

23 Respondent shall not work as a faculty member in an approved school of nursing or as an
24 instructor in a Board approved continuing education program.

25 Respondent shall work only on a regularly assigned, identified and predetermined
26 worksite(s) and shall not work in a float capacity.

27 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
28 request documentation to determine whether there should be restrictions on the hours of work.

1 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
3 than six months prior to the end of the probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
5 Respondent shall submit to the Board the original transcripts or certificates of completion for the
6 above required course(s). The Board shall return the original documents to Respondent after
7 photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
9 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of \$1,750.00. Respondent shall be permitted to pay these costs in a payment plan
11 approved by the Board, with payments to be completed no later than three months prior to the end
12 of the probation term.

13 If Respondent has not complied with this condition during the probationary term, and
14 Respondent has presented sufficient documentation of his good faith efforts to comply with this
15 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
16 extension of Respondent's probation period up to one year without further hearing in order to
17 comply with this condition. During the one year extension, all original conditions of probation
18 will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of his
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
21 the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has been
23 filed against Respondent's license or the Attorney General's Office has been requested to prepare
24 an accusation or petition to revoke probation against Respondent's license, the probationary
25 period shall automatically be extended and shall not expire until the accusation or petition has
26 been acted upon by the Board.

27 13. **License Surrender.** During Respondent's term of probation, if he ceases
28 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of

1 probation, Respondent may surrender his license to the Board. The Board reserves the right to
2 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
3 take any other action deemed appropriate and reasonable under the circumstances, without further
4 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
5 longer be subject to the conditions of probation.

6 Surrender of Respondent's license shall be considered a disciplinary action and shall
7 become a part of Respondent's license history with the Board. A registered nurse whose license
8 has been surrendered may petition the Board for reinstatement no sooner than the following
9 minimum periods from the effective date of the disciplinary decision:

10 (1) Two years for reinstatement of a license that was surrendered for any reason other
11 than a mental or physical illness; or

12 (2) One year for a license surrendered for a mental or physical illness.

13 14. **Mental Health Examination.** Respondent shall, within 45 days of the
14 effective date of this Decision, have a mental health examination including psychological testing
15 as appropriate to determine his capability to perform the duties of a registered nurse. The
16 examination will be performed by a psychiatrist, psychologist or other licensed mental health
17 practitioner approved by the Board. The examining mental health practitioner will submit a
18 written report of that assessment and recommendations to the Board. All costs are the
19 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
20 result of the mental health examination will be instituted and followed by Respondent.

21 If Respondent is determined to be unable to practice safely as a registered nurse, the
22 licensed mental health care practitioner making this determination shall immediately notify the
23 Board and Respondent by telephone, and the Board shall request that the Attorney General's
24 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
25 practice and may not resume practice until notified by the Board. During this period of
26 suspension, Respondent shall not engage in any practice for which a license issued by the Board
27 is required, until the Board has notified Respondent that a mental health determination permits
28 Respondent to resume practice. This period of suspension will not apply to the reduction of this

1 probationary time period.


2 If Respondent fails to have the above assessment submitted to the Board within the 45-day
3 requirement, Respondent shall immediately cease practice and shall not resume practice until
4 notified by the Board. This period of suspension will not apply to the reduction of this
5 probationary time period. The Board may waive or postpone this suspension only if significant,
6 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
7 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
8 Only one such waiver or extension may be permitted.

9 15. Therapy or Counseling Program. Respondent, at his expense, shall
10 participate in an on-going counseling program until such time as the Board releases him from
11 this requirement and only upon the recommendation of the counselor. Written progress reports
12 from the counselor will be required at various intervals.

13 ACCEPTANCE

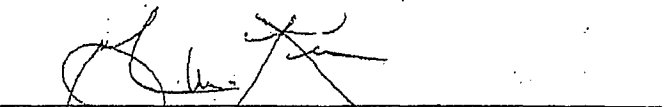
14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney, John M. Kucera, Esq.. I understand the stipulation and the effect it
16 will have on my Registered Nurse License. I enter into this Stipulated Settlement and
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Board of Registered Nursing.

19
20 DATED: 5/18/12


21 DAVID LOUIS BUTTERFIELD
Respondent

22 I have read and fully discussed with Respondent David Louis Butterfield the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
24 I approve its form and content..

25
26 DATED: 5-18-12


27 John M. Kucera, Esq.
Attorney for Respondent
28

ENDORSEMENT

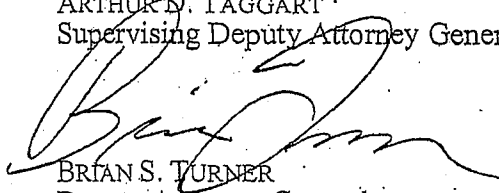
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

May 21, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General


BRIAN S. TURNER
Deputy Attorney General
Attorneys for Complainant

SA2011100752
Stipulation.rtf

Exhibit A

Accusation No. 2012-147

1 KAMALA D. HARRIS
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2 ARTHUR D. TAGGART
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3 BRIAN S. TURNER
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7 Attorneys for Complainant

8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-147

12 DAVID LOUIS BUTTERFIELD
3414 Adams Lane
13 Redding, CA 96002

ACCUSATION

14 Registered Nurse License No. 426578

15 Respondent.

16
17 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

18 PARTIES

19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

21 2. On or about June 30, 1989, the Board issued Registered Nurse License Number
22 426578 to David Louis Butterfield ("Respondent"). The license was in full force and effect at all
23 times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

24 JURISDICTION

25 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
26 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
27 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
28 Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof"

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

7. Respondent's Registered Nurse License is subject to discipline pursuant to section 2761(f) based on conviction of a crime. On or about February 2, 2011, Respondent was convicted by the Court in the case of *People v. David Louis Butterfield*, (Super. Ct. Colusa County, Case No. CR52284); after Respondent pled nolo contendere to violating Penal Code section 311.6 (obscene conduct), a crime substantially related to the qualifications, functions or duties of a licensed registered nurse within the meaning of section 2761(f). The circumstances of the crime are that on or about October 19, 2010, Respondent drove his vehicle in a manner and speed to keep pace with a semi-truck and positioned so that Respondent remained visible to the operator of the semi-truck for a substantial period of time. While Respondent was visible to the

1 semi-truck operator; Respondent was observed to be vigorously masturbating.

2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nurse License Number 426578, issued to
6 David Louis Butterfield;

7 2. Ordering David Louis Butterfield to pay the Board of Registered Nursing the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3; and,

10 3. Taking such other and further action as deemed necessary and proper.

11 DATED: September 6, 2011

12 *for* LOUISE R. BAILEY, M.ED., RN
13 Executive Officer
14 Board of Registered Nursing
15 Department of Consumer Affairs
16 State of California
17 Complainant

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